*HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+ WRIT PETITION NOS.4479, 4566, 4567, 4568, 4569, 5165, 5167, 5178, 5179, 5180, 5195, 5196, 5197, 5201, 5215, 5281, 5488, 5489, 5490, 5491, 5492, 5493, 5494, 5497, 5498, 5593, 5584, 5582 AND 5887 OF 2007

% 20.03.2007

1. # Gandepalli Primary Agricultural Cooperative Society Limited, Gandepalli Village and Mandal, East Godavari District, represented by its President P.V.V. Satyanarayana

…Petitioner

And

1. *$* Sri Korpu Latchayya Dora S/o Sri Tammayya R/o Singarampalem Village Gandepalli Mandal, East Godavari District and two others.

…Respondents

! Counsel for the petitioner: M/s Bobba Vijaya Lakshmi

^ Counsel for respondent : Mr. Ghanta Prasad Caveator

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NOS. 4479,

4566,4567,4568,4569,5165,5167,5178,5179,5180,5195,5196,5197,5201,5215,5281,5488,5489,5490,5491,5492,54

AND 5887 OF 2007

DATE: 20.03.2007

BETWEEN

2. Gandepalli Primary Agricultural Cooperative Society Limited, Gandepalli Village and Mandal, East Godavari District, represented by its President P.V.V. Satyanarayana

….Petitioners

AND

2. Sri Korpu Latchayya Dora S/o Sri Tammayya R/o Singarampalem Village Gandepalli Mandal, East Godavari District and two others.

…. Respondents

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NOS.

4479,4566,4567,4568,4569,5165,5167,5178,5179,5180,5195,5196,5197,5201,5215,5281,5488,5489,5490,5491,54

AND 5887 OF 2007

COMMON ORDER:

This batch of Writ Petitions is filed by the Primary Agricultural Cooperative Society Limited, Gandepali of East Godavari District, aggrieved by the orders passed by the Andhra Pradesh Cooperative Tribunal, Visakhapatnam, in various miscellaneous applications filed in a batch of original applications before it.

One Sri Korpu Latchayya Dora, first respondent in W.P.No. 4479 of 2007, functioned as the President of the society for a term from 1982 to 1995. It is alleged that during his tenure, he raised loans of different categories in the name of himself and his relatives, who figured as first respondent in other Writ Petitions, amounting to approximately about Rs. 26 lakhs. On finding that the loan amounts were not paid together with accrued interest, the petitioner initiated proceedings under Section 71 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') before the third respondent. After following the procedure prescribed under the Act and the Rules made thereunder, the third respondent issued recovery certificates. It is not necessary to refer to the litigation that ensued between the parties on earlier occasions. Suffice it to say that the recovery certificates issued by the third respondent on 11.7.2003 were assailed by the loanees, by filing appeals before the Tribunal under Section 76 of the Act. They also filed miscellaneous applications under Rule 11 of the A.P. Cooperative Tribunal Procedure Rules 1994.

Initially, the Tribunal granted an ex-parte interim order. On receiving notice, the petitioner filed applications, for vacating the interim orders. After hearing both the parties, the Tribunal passed separate, but identical orders dated 12.2.2007, making the interim orders absolute, on condition that the sum of Rs. 10,67,057/-, representing the compensation payable under the Land Acquisition Act to the loanees, and now remaining in the Tribunal, can be withdrawn by the petitioner herein. The grievance of the petitioner is that though Rule 11 of the Procedure Rules mandates that the parties seeking stay must deposit 50% of the amount due, the Tribunal did not comply with the same.

On behalf of the contesting respondents, separate counter affidavits are filed and they pleaded that the amounts representing the principal and the interest have been cleared by them and the dispute is only about the levy of penal interest and costs. It is urged that the recovery certificates issued by the third respondent in the individual cases are contrary to the provisions of law and the amounts claimed thereunder is impermissible.

Heard the learned counsel for the petitioner, the learned Government Pleader for Cooperation, and the learned counsel for the contesting respondents.

A serious attempt is made on behalf of the petitioner to persuade this Court that in the matters of this nature, the contesting respondents ought to have made a pre-deposit of 50% of the amount covered by the recovery certificates. For this purpose, reliance is made upon Rule 11 of the Procedure Rules. Except this, there is no other Rule, which makes a reference to the deposit of 50%. It is stated that the validity of Rule 11 has already been upheld by this Court. Rule 11 reads as under:

"11. Application for interim suspension order:- Where a party seeks the interim suspension of the impugned order, he shall file a separate application for the same. Every such application shall be supported by an affidavit in respect of applications for stay or suspension of the impugned orders passed by the departmental authorities, specially relating to misappropriation of amounts and sanction of benami loans, no interim orders in the nature of stay or suspension for a specified period shall be issued unless the applicant produces a cash deposit of not less than 50% of the amount involved in the impugned order or furnishes security of equal value as directed by the Tribunal".

From the above, it is clear that the purport of the said Rule is only that it prescribes the procedure for filing an application for interim suspension of the order challenged in the appeal. There could have been some basis for incorporating the conditions to be mentioned therein, imposed while granting stay, had this been the only provision, dealing with the powers of the Tribunal, in the matter of granting stay. The rule making authority had framed an independent and separate rule viz., Rule 12, dealing with the powers of the Tribunal in this regard. Rule 12 reads as under:

"12. Stay of Orders: In an appeal, if the Tribunal is satisfied on an affidavit that it is just and reasonable that the operation of the impugned order be stayed or suspended.

(a) it may, by order, suspend the operation of the impugned order temporarily after giving notice to the affected persons; or

(b) it may give notice to the respondent or respondents and after giving an opportunity of being heard to both the parties either confirm or vacate the order suspending or staying the operation of the impugned order."

A combined reading of Rules 11 and 12 discloses that a serious defect in drafting Rule 11 has taken place. The Rule making authority is not clear in its mind as to whether it intended to stipulate the deposit of 50% as a condition precedent for presenting the appeal, or an application for stay; or to circumscribe the powers of the Tribunal in the matter of granting stay. It is not that the principal or subordinate legislations do not stipulate conditions, which are to be complied with whenever appeals are to be presented. Generally, in the appeals that involve the adjudication into financial liability of the parties, the persons seeking the relief are required to make what are known as "pre-deposits" representing a portion of the amount in dispute. It is imposed as a pre-condition, for presenting the appeal and not for the purpose of presentation of application for stay. The other method through which, such conditions are imposed is that the adjudicatory authority is required to ensure the deposit of a fraction of the amount in dispute, as a condition precedent for grant of stay.

The scheme under the Act and the relevant Rules does not contain any condition as to pre-deposit, for presentation of appeal. Further Rule 12 does not circumscribe the power of an appellate authority in the matter of granting interim orders. Under these circumstances, it is difficult to infer that the appellant must deposit 50% of the disputed amount, as a condition precedent for seeking stay. It however, does not mean that the appellate authority cannot impose any condition while granting stay. Even in the absence of any such provisions, it is always open for the appellate authority to impose conditions, taking into account, the nature of dispute and the interest of the parties.

In the instant case, even according to the Appellate Tribunal, the dispute is mainly about the levy of penal interest, and costs. The contesting respondents did not dispute the fact that they have raised loans. However, they pleaded that they discharged the loan, comprising of principal and simple interest. If any amount is still recoverable under those two heads, the interest of the petitioner can be protected by requiring the contesting respondents to deposit 50% of the amount due. A sum of Rs. 10,67,057/- representing the amounts of compensation payable to the contesting respondents, which was called for by the Tribunal, was also made available to the petitioner and it needs to be taken into account.

For the foregoing reasons, all the Writ Petitions are disposed of directing that:

(a) the Tribunal shall ascertain the principal amount and the simple interest that had accrued thereupon at the agreed rate of interest, till the date of passing of the recovery certificate issued by the third respondent i.e. 11.7.2003.

(b) it shall also ascertain the amounts paid by the contesting respondents at various points of time, either in individual cases ,or collectively, after giving an opportunity to both the parties to submit their own calculations.

(c) If the amounts paid by the contesting respondents at various points of time, together with the sum of Rs. 10,67,057/-, is sufficient to cover principal amount and the simple interest on agreed rates, arrived at in Clause (a), the contesting respondents shall not be required to make any further deposits.

(d) If any amount is found to be due in the above exercise, the contesting respondents shall be entitled for stay the operation of the recovery certificate on condition that they deposit 50% of the amount due, within two weeks from the of the ascertainment.

This exercise shall be completed within a period of one month from the date of receipt of a copy of this order. The Tribunal shall proceed with the hearing of the appeals on ensuring the compliance of the condition referred to above. This order shall not be construed as deciding the liability of the parties in the context of levy of costs or penal interest, as the case may be. There shall be no order as to costs.

_____ L. NARASIMHA REDDY, J

Date: 20.3.2007
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Note: 1. communicate by wire at party's costs.
2. L.R. Copy to be marked.